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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/784,094	02/16/2001	Roger Pellenc	P20520	3219

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GREENBLUM & BERNSTEIN, P.L.C.  
1941 ROLAND CLARKE PLACE  
RESTON, VA 20191

EXAMINER

MAMMEN, NATHAN SCOTT

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 09/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/784,094

Applicant(s)

PELLENC ET AL.

Examiner

Nathan S Mammen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) \_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 46 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 45 recites the broad recitation of "between an angle of 0 and 180 degrees", and claim 46 recites "between an angle of 45 to 65 degrees" which is the narrower statement of the range/limitation.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 31-54 are rejected under 35 U.S.C. 102(b) as being anticipated by van der Lely (U.S. Patent 4,050,519).

The van der Lely '519 patent discloses a device for soil cultivating machine comprising a rotor (6) and a plurality of tools (25) mounted on the rotor. The at least one tool comprises a fixing end (24), a soil engaging end (26), and connecting portion (at the curve of the tine) which connects the fixing end to the soil engaging portion. The tool is movable mounted to the rotor.

The active portion projects towards a direction of rotation of a rotor when the tool is installed on rotor (See Fig 1, right rotor).

Regarding claims 34-54 : The fixing end of the tool is pivotally mounted to the rotor (about axis b). The soil cultivating machine comprises a weeding machine and hoeing machine (inherent use of soil cultivating machine). The tool is interchangeably mounted to the rotor (see Abstract). The connecting portion is arranged to be inclined relative to a center axis running through the rotor (a). The soil engaging portion (26) extends radially outwards from the fixing end. The fixing end comprises a ring (23) adapted to receive a journal axle (24); the journal axle movably mounting the fixing end to the rotor. The tool comprises a shape which resembles a hook or "L" (see Fig. 2). The soil engaging portion comprises a sharp leading edge (i.e. the rib member on 26 – see Fig. 2) and a curved surface. The soil engaging portion has an inclined

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portion including first and second lower surfaces, with the first lower surface being arranged above the second lower surface when the tool is mounted on the rotor (see the hooked end portion of the tools 26 in Fig. 1). The soil engaging portion comprises a boss portion (in the absence of any definition to the contrary, the boss portion is the portion connecting the soil engaging portion to the connecting portion). The rotor (6) is rotatably mounted to the soil cultivating machine. Each of the plurality of tools (26) is pivotally mounted to the rotor (6). Each of the tools are adapted to pivot between an angle of 0 to 180 degrees (see Fig. 1, pivoting occurs about axis b), and thus also between an angle of 45 to 65 degrees. The tool can pivot at an angle greater than 180 degrees. Each of the tools is mounted about an axis (c) which is not parallel to the center axis (a) of the rotor. A guide (4) is arranged adjacent the rotor (6). A fixing flange (22) helps retain the at least one tool on the rotor. The active surface comprises a surface that is approximately planar (see Fig. 3 – the ribs on the tool). The planar surface is oriented at an angle relative to a plane that is substantially perpendicular to the pivot axis. The angle at which the planar surface makes to the plane perpendicular to the pivot axis depends upon the rotation of the tool relative to the axis (b). Thus, the angle that the planar surfaces makes includes an angle of 6 degrees.

Regarding claims 31 and 32: The fixing end of the tools are movably fixed to the rotor (6) via an axle (19). The axle is oriented (by adjusting device 16) at an angle relative to the center axis (a) of the rotor. The fixing portion includes a ring portion (23) movably fixed to the rotor via the axle. A mechanism (21, 22) biases the tools against the rotor.

*Response to Arguments*

6. Applicant's arguments filed 7/2/02 have been fully considered but they are not persuasive.

The claims of the instant invention do not specify how the mechanism for biasing is to work. Accordingly, the claims must be given the broadest reasonable. If the biasing is meant to indicate that the mechanism "urges" the tools against the rotor, then the shoulder (21) and clip (22) clearly urge the tool against the rotor. Applicant has not provided any structural definition of the mechanism for biasing. In claim 31 or 32, Applicant has not claimed that the tools move relative to the flanges.

Applicant asserts that the tools of the van der Lely '519 patent do not have a ring portion. However, flange (23) meets the limitation of a ring portion and is included at the fixing end of the tool. Applicant has not claimed any structural limitations to distinguish the van der Lely '519 patent over the claims of the instant invention, e.g., that the ring portion is integral with the tool, etc.

*Conclusion*

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan Mammen whose telephone number is (703) 306-5959. The examiner can normally be reached Monday through Thursday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at (703) 308-3870. The fax number for this Group is (703) 305-3579.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-1113.

  
**Thomas B. Will**  
**Supervisory Patent Examiner**  
**Group 3600**

**NSM**  
**9/25/02**

*Nathan S. Mammen*